

CORDELLUS McMURTRY,)
)
 Plaintiff,)
) Case No. 18 CV 2176
 -vs-)
) Chicago, Illinois
 S. OBAISI, *et al.*,)
) January 29, 2020
) 9:04 a.m.
 Defendants.)

APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE CLERK: 18 CV 2176, McMurtry versus Obaisi.

3 MS. NIEMANN: Judge, Mr. Furmanski, who represents
4 one of the defendants, had notified us yesterday that he had
5 an 8:45 appearance before another judge in the building, so he
6 may be late.

7 THE COURT: That's fine. We'll hold the case.

8 MS. NIEMANN: Thank you.

9 THE COURT: Thank you.

10 (The above-mentioned case was passed and was later
11 recalled as follows:)

12 THE CLERK: Recalling 18 CV 2176, McMurtry versus
13 Obaisi, *et al.*

14 MS. NIEMANN: Good morning, Judge.

15 Gail Niemann for the plaintiff, Mr. McMurtry.

16 THE COURT: Good morning.

17 MR. MOY: Good morning, Your Honor.

18 Joseph Moy, M-o-y, for the defense, Anna McBee and
19 Pfister. I'm standing in for my colleague, Ms. Leung.

20 THE COURT: Good morning.

21 MR. FURMANSKI: Good morning, Your Honor.

22 Brett Furmanski on behalf of the Wexford defendants.

23 THE COURT: Good morning. Thank you for being here.

24 Since you were here last time, I saw that the
25 plaintiff filed the first amended complaint. It was filed on

1 January 22nd, Docket No. 71.

2 I had not checked on service of process. Did the
3 plaintiff add any new defendants? And if so, have they been
4 served?

5 MS. NIEMANN: He did add one new individual
6 defendant, yes.

7 THE COURT: Okay. Who was that?

8 MS. NIEMANN: It's the last named defendant, Jason
9 Dunn.

10 THE COURT: Jason Dunn. Okay. Has Jason Dunn been
11 served or is that in the works?

12 MS. NIEMANN: I don't believe he has been served.

13 THE COURT: Okay. What's the plan on that?

14 MS. NIEMANN: So, you know, I have conferred with
15 Mr. McMurtry several times over the last couple of weeks
16 pursuant to your January 6th order and have advised him that I
17 anticipated filing this renewed motion for relief from the
18 assignment and also emphasized to him the pending deadline for
19 any amended complaints, which is this Friday, I think.

20 THE COURT: I took that to be this, actually.

21 MS. NIEMANN: Pardon me?

22 THE COURT: And I'm sorry to interrupt you. I took
23 his first amended complaint filed on January 22nd to be his
24 attempt to meet my January 31st deadline?

25 MS. NIEMANN: Exactly. I'm sorry. That's what I was

1 trying to say.

2 THE COURT: In other words, I don't expect another
3 complaint. Do you?

4 MS. NIEMANN: No. I think that he intends this to be
5 his amended complaint.

6 THE COURT: Me, too, yeah.

7 MS. NIEMANN: But this is his amended complaint, not
8 drafted by me.

9 THE COURT: Correct. I took it that way.

10 MS. NIEMANN: Okay.

11 THE COURT: All right. So Defendant Dunn does need
12 to be served with process.

13 Have you sent a waiver of service of process form to
14 Mr. Dunn or his counsel?

15 MS. NIEMANN: I have not.

16 THE COURT: Okay. Do either of you represent
17 Mr. Dunn?

18 MR. FURMANSKI: At this point, I don't know who
19 Mr. Dunn is. I'd have to investigate whether he is a Wexford
20 employee or IDOC.

21 MR. MOY: The same area. I don't know.

22 THE COURT: Okay. Let's figure that out. I would
23 like plaintiff's counsel to send a waiver of service of
24 process form to defense counsel.

25 You may not represent them. I don't know who he is

1 either.

2 MS. NIEMANN: I can tell you he works -- or he works
3 at Stateville, but I know that that doesn't necessarily
4 resolve the question of whether he's a Wexford employee or a
5 State of Illinois employee.

6 THE COURT: Got it. Okay.

7 So I'd like you to go ahead and submit the waiver of
8 service of process form to defense counsel. I don't know if
9 you represent him. I don't know if you do represent him, if
10 he's willing to waive. Okay? But I'd like you to at least
11 try, and I'd like you to at least ask.

12 And if you -- if you get him a waiver of service,
13 great. If not, serve him the old-fashioned way, just get a
14 process server and go ahead and serve him.

15 MR. FURMANSKI: Your Honor, I do have a question
16 about the amended complaint.

17 THE COURT: Yes.

18 MR. FURMANSKI: Some cases, I see when an inmate
19 files, you know, without, I guess, their attorney filing it, a
20 handwritten complaint, even if it's amended, they'll do
21 another merit review.

22 I don't know in this case whether another merit
23 review is going to be conducted with this complaint. We may
24 consider filing a motion to dismiss. So we're just not sure
25 whether to wait on the Court, whether you're going to do a

1 merit review or not.

2 THE COURT: So that's a good question. I, frankly,
3 was not sure about that either. If I expect there to be a
4 merit review, I will put something on the docket that says the
5 Court is going to independently do a merit review. Okay. And
6 that may -- may or may -- you should assume that I will not --

7 MR. FURMANSKI: Okay.

8 THE COURT: -- unless I file a notice that says that
9 I will.

10 MR. FURMANSKI: Got it.

11 THE COURT: Okay. So you should assume it's the
12 operative complaint going forward.

13 So the motion to withdraw, I absolutely remember the
14 last hearing, and I took it that -- there was a dialogue about
15 what was appropriate to include in the first amended
16 complaint, that maybe counsel and her client had a difference
17 of opinion about what was appropriate.

18 He went ahead and filed the first amended complaint,
19 it looks to me, on his own, under his own signature without
20 you signing off on it. Is that basically correct?

21 MS. NIEMANN: That's right.

22 THE COURT: Okay. Here's what I will say: There may
23 come a time when you need to get out because of your ethical
24 obligations. I don't think we're there yet. Okay. I don't
25 think we're there yet.

1 I want you to -- it's important for individuals such
2 as Mr. McMurtry to have counsel unless he can't have counsel.
3 And so I'm not going to let you out yet. Okay.

4 You're grimacing and wincing --

5 MS. NIEMANN: I'm just trying to --

6 THE COURT: -- and making all sorts --

7 MS. NIEMANN: -- consider --

8 THE COURT: -- of facial distortions at me.

9 Go ahead.

10 MS. NIEMANN: Yeah, I mean, I'm just trying to --
11 yeah, I need a little time to think through my ethical
12 obligations and this kind of odd thing of helping him
13 pursue -- prosecute a claim on a complaint that only he has
14 filed.

15 THE COURT: Well, I have that all the time, where a
16 prisoner will file a complaint on his own and later a lawyer
17 is appointed.

18 MS. NIEMANN: For settlement purposes or to --

19 THE COURT: No.

20 MS. NIEMANN: No.

21 THE COURT: I mean, I have that left, right, up, and
22 down. It's not unusual.

23 MS. NIEMANN: Okay.

24 THE COURT: If you think there is something in here
25 that you think does not satisfy the Rule 11 standard, then you

1 need to have that dialogue with your client. And I may
2 revisit that at an appropriate time, but where things are
3 right now, we've got a plaintiff who is a prisoner who is
4 claiming that there is a medical-related issue.

5 I try to make sure people like that get counsel,
6 unless they really have surrendered the privilege of getting
7 appointed counsel. Okay.

8 I took it from your pleading -- excuse me -- from
9 your motion that there was a difference of opinion about the
10 merits of certain allegations. That's how I read it. You can
11 tell me if that's wrong. But he's alleging something that you
12 might view a little differently than him. Is that fair to
13 say?

14 MS. NIEMANN: Yes. And I would say that -- I would
15 characterize it as saying I don't dispute the factual
16 allegations that he has made, but I have to evaluate them from
17 a legal perspective as well, and that's where he and I have a
18 difference of opinion.

19 THE COURT: There may come a time when you have to
20 withdraw. "Have to" is probably the wrong phrase.

21 There may come a time when you have a better argument
22 to withdraw than you do today; but as things stand right now,
23 there is a complaint on file filed by a prisoner in his own
24 capacity that you have not personally vouched for. That's how
25 procedurally we are today. You are not personally responsible

1 for this complaint because your client did it *sua sponte* on
2 his own without your blessing. So I don't -- I won't hold you
3 professionally responsible for the contents of that complaint.

4 Does that make sense?

5 MS. NIEMANN: Yes.

6 THE COURT: Does that help?

7 MS. NIEMANN: Yes, I think so. I -- as I say, I just
8 kind of need a little time to get my mind around this, wrap my
9 mind around this.

10 THE COURT: You know, this is a -- you know, it's a
11 privilege to be in the building for all of us every day. And,
12 you know, being a member of the trial bar, *pro bono* is just
13 one of those things that people have got to do.

14 I know you've done *pro bono* work before, and I don't
15 take your motion as an unwillingness to do *pro bono*, but I
16 would like this individual to have counsel unless things have
17 gotten difficult enough that that's just really not an option
18 anymore. I understand that you're not having --

19 MS. NIEMANN: It isn't difficult. And I want to tell
20 you, as recently as yesterday afternoon, I served discovery --
21 in my mind, I was thinking of on behalf of Mr. McMurtry -- to,
22 you know, helping him advance his claims and get the
23 information that he needs.

24 THE COURT: Right. So I -- if down the road there
25 comes a time when you have just -- you're in a difficult spot

1 ethically, file a motion, file a motion for a status
2 conference or whatnot and come in and talk to me. Okay. We
3 could even have an *ex parte* conversation between you and me
4 and Mr. McMurtry with advance notice to the other side, if
5 need be. Okay. But I just think we're not there yet in terms
6 of having you withdraw. Okay?

7 MS. NIEMANN: Okay.

8 THE COURT: Is there anything else that we've got to
9 discuss today?

10 MS. NIEMANN: You've scheduled a status, I think, for
11 February 10th and have directed that the defendants make
12 Mr. McMurtry available by phone.

13 THE COURT: Right. Do we still -- is there any
14 reason to still do that, that hearing?

15 MR. FURMANSKI: I actually am going to be out of
16 town. I know that might not be excused because I could find
17 coverage, but --

18 THE COURT: I hear that. The question was whether we
19 need the hearing at all at this point.

20 MS. NIEMANN: I mean, it would seem to me that
21 perhaps we don't, that we'll need to serve through the service
22 issue, and then responsive pleadings to the complaint.

23 THE COURT: Right. So I'm going to vacate the
24 February 10th date.

25 Why don't you come back in April. We'll get you a

1 date in the first half of April.

2 THE CLERK: April 14th, 9:30.

3 THE COURT: Do you want to set a schedule for the
4 response to the motion -- are you going to file another motion
5 to dismiss, do you think?

6 MR. FURMANSKI: I'm sorry?

7 THE COURT: Do you expect you're going to file a
8 motion to dismiss? How are you going to respond to the
9 complaint?

10 MR. FURMANSKI: I still have to evaluate it, but
11 since -- as far as the Wexford defendants, I don't know if
12 Mr. Dunn is Wexford at this point; but as far as Dr. Obaisi
13 and Wexford, I mean, I --

14 THE COURT: Got it.

15 MR. FURMANSKI: -- assume allegations are very
16 different, so --

17 THE COURT: I won't set a schedule on that. You'll
18 just follow --

19 MR. FURMANSKI: Right.

20 THE COURT: -- the federal rules.

21 MR. FURMANSKI: That's fine.

22 THE COURT: Okay? Is there anything else we've got
23 to cover today?

24 MR. FURMANSKI: Not from Wexford.

25 MR. MOY: No, Your Honor.

1 THE COURT: Plaintiff's counsel?

2 MS. NIEMANN: I don't think there's anything further.

3 THE COURT: All right. Thank you for your continued
4 service.

5 MS. NIEMANN: Thank you.

6 THE COURT: Thank you.

7 MS. NIEMANN: You know, I was going to note for you,
8 I volunteer also at the Hibbler help desk.

9 THE COURT: See, I --

10 MS. NIEMANN: And just to appreciate that they're
11 45-minute appointments, and to digest a plaintiff's story and
12 analyze a motion to dismiss and discuss settlement is a lot to
13 accomplish --

14 THE COURT: It's a lot.

15 MS. NIEMANN: -- in 45 minutes.

16 THE COURT: I know, but --

17 MS. NIEMANN: And the appointments, unfortunately,
18 are very difficult for -- they're difficult for plaintiffs to
19 come by.

20 THE COURT: Yeah.

21 MS. NIEMANN: There are some shortage of them.

22 THE COURT: It's too bad there aren't more resources.
23 Maybe that's my retirement option. Maybe I'll throw my hat in
24 the ring down the line.

25 MS. NIEMANN: Well, I think this change in the rule

1 that you can kind of satisfy your trial bar obligations I
2 think by volunteering there for a year has boosted the number
3 of volunteers.

4 THE COURT: I think that's right. It's really
5 important, though. I mean, you know, I did not see this as
6 much when I was a member of the bar, but I see it here every
7 day. There are just people out there --

8 MS. NIEMANN: Yeah.

9 THE COURT: -- that just need a lawyer.

10 MS. NIEMANN: No, it's a very professionally
11 rewarding experience to do these --

12 THE COURT: Yeah, well, thank you.

13 MS. NIEMANN: -- because plaintiffs are very sincere.

14 THE COURT: And thank you for doing that, and thank
15 you for your service on this case. I know that it's --

16 MS. NIEMANN: Of course.

17 THE COURT: -- maybe not completely what you expected
18 this morning, but take it as a compliment that you're still on
19 this case. Okay.

20 MS. NIEMANN: Sounds good.

21 THE COURT: Thank you so much. Take care.

22 MR. FURMANSKI: Thank you, Your Honor.

23 (Which were all the proceedings heard.)
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CERTIFICATE

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/ Amy Spee

2/28/2020

Amy Spee, CSR, RPR, CRR
Official Court Reporter

Date